

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KURT PHILLIP, also known as Kurt Philip,

Plaintiff,

v.

**9:10-CV-643
(FJS/GHL)**

**WILLIAM D. BROWN, Superintendent,
Eastern Correctional Facility; and YASIN
LATIF, Imaam and Coordinating Chaplin
of Eastern Correctional Facility,**

Defendants.

APPEARANCES

OF COUNSEL

**KURT PHILLIP
also known as Kurt Philip
99-A-3711**
Eastern New York Correctional Facility
Box 338
Napanoch, New York 12458
Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**
The Capitol
Albany, New York 12224
Attorneys for Defendants

CHARLES J. QUACKENBUSH, ESQ.

SCULLIN, Senior Judge

ORDER

On August 24, 2010, Defendants filed a motion to dismiss Plaintiff's complaint for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See* Dkt. No. 14. Plaintiff opposed that motion. *See* Dkt. No. 15. On February 4, 2011, Magistrate Judge Lowe issued a Report-Recommendation in which he found that Plaintiff had stated a class-of-one

equal protection claim¹ against both Defendants and, therefore, recommended that this Court deny Defendants' motion. *See* Dkt. No. 16. The parties did not file any objections to that recommendation.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Lowe's February 4, 2011 Report-Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Lowe's February 4, 2011 Report-Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Defendants' motion to dismiss Plaintiff's complaint is **DENIED**; and the Court further

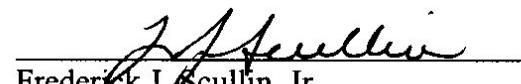
¹ As the Second Circuit recently reiterated, "[a] class-of-one claim exists 'where the plaintiff alleges that [he] has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.'" *Analytical Diagnostic Labs, Inc. v. Kusel*, 626 F.3d 135, 140 (2d Cir. 2010) (quoting *Village of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000)).

ORDERS that this matter is referred to Magistrate Judge Lowe for all further pretrial matters; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: February 25, 2011
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge